No. 05-1120

In the Supreme Court of the United States

COMMONWEALTH OF MASSACHUSETTS, *et al.*

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The District of Columbia Circuit

BRIEF IN OPPOSITION FOR THE RESPONDENT STATES OF MICHIGAN, TEXAS, IDAHO, NORTH DAKOTA, UTAH, SOUTH DAKOTA, ALASKA, KANSAS, NEBRASKA, AND OHIO

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QUESTION PRESENTED

The State Respondents intervened below in support of the United States Environmental Protection Agency ("EPA"). The arguments the State Respondents presented to the Court of Appeals were tailored to their interests and were intended only to supplement EPA's arguments.

The issue the State Respondents addressed before the Court of Appeals was whether EPA lacks the authority under the Clean Air Act ("CAA" or "Act") to regulate the emission of carbon dioxide and other greenhouse gases to address global climate change. The question presented by the State Respondents to this Court is whether the Petition for a Writ of Certiorari should be denied for two independent reasons: (1) the Court of Appeals correctly dismissed the petitions for review given the fact that EPA lacks such authority, and (2) the Court of Appeals' decision is not binding precedent.

PARTIES TO THE PROCEEDING

Petitioners, who were petitioners in the United States Court of Appeals for the District of Columbia Circuit, are the Commonwealth of Massachusetts, the states of California, Connecticut, Illinois, Maine, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the District of Columbia, American Samoa Government, New York City, Mayor and City Council of Baltimore, Center for Biological Diversity, Center for Food Safety, Conservation Law Foundation, Environmental Advocates, Environmental Defense, Friends of the Earth, Greenpeace, International Center for Technology Assessment, National Environmental Trust, Natural Resources Defense Council, Sierra Club, Union of Concerned Scientists, and U.S. Public Interest Research Group.

Respondents are EPA (the respondent below); the Alliance of Automobile Manufacturers; National Automobile Dealers Association; Engine Manufacturers Association; Truck Manufacturers Association; CO_2 Litigation Group; Utility Air Regulatory Group; and the States of Michigan, Texas, Idaho, North Dakota, Utah, South Dakota, Alaska, Kansas, Nebraska, and Ohio (collectively, the "State Respondents"). All of the Respondents other than EPA were intervenors below.

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The decision of the Court of Appeals is reported at 415 F.3d 50 (D.C. Cir. 2005) and is reproduced in the Petitioners' Appendix (Pet. App. 1-58). The Court of Appeals' order denying Petitioners' petition for rehearing *en banc* is reported at 433 F.3d 66 (D.C. Cir. 2005) and is reproduced in the Petitioners' Appendix (Pet. App. 94-97).

JURISDICTION

The judgment of the Court of Appeals was entered on August 15, 2005. The Court of Appeals' order denying the petition for rehearing *en banc* was entered on December 2, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved in the case are Sections 108(a), 109(a) and (b), 110(a), and 202(a)(1) of the Act.[1] The pertinent statutory text is set out in the State Respondents' Appendix (State Resp. App. 1b – 14b).

STATEMENT

Petitioners challenge the denial by EPA of a petition for rulemaking that sought the regulation of emissions of carbon dioxide ("CO_2") and other greenhouse gases from new motor vehicles and engines under Section 202 of the CAA, 42 U.S.C. § 7521.

EPA's denial of the petition was based on the agency's position that the CAA "does not authorize EPA to regulate for global climate change purposes[.]"[2] EPA therefore determined

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[1] 42 U.S.C. §§ 7408(a), 7409(a) and (b), 7410(a), 7521(a)(1).

[2] 68 Fed. Reg. 52,922; 52,925 (Sept. 8, 2003).

that CO_2 and other greenhouse gases cannot be considered "air pollutants" subject to the CAA's regulatory provisions for any contribution they may make to global climate change.[3] EPA also concluded that even if it did have such authority, it would not exercise it at this time because of uncertainties about the causes and effects of climate change and additional policy considerations.[4]

Petitioners filed petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit challenging EPA's denial of their petition for rulemaking. The three-member panel issued three separate opinions. Two of the opinions (the lead opinion by Judge Randolph and an opinion concurring in the judgment by Judge Sentelle) concluded that the petitions for review should be denied, but for different reasons. Importantly, none of the opinions commanded a majority of the panel members. The panel's decision therefore has no binding precedential effect.

1. Statutory Framework

The Act, 42 U.S.C. §§ 7401-7671q, establishes "a comprehensive national program that ma[kes] the States and the Federal Government partners in the struggle against air pollution."[5] Under the Act, EPA establishes national ambient air quality standards ("NAAQS") for certain air pollutants, and states must then develop state implementation plans to implement, maintain and enforce the NAAQS.[6]

More specifically, Section 108(a) directs EPA to create a list of air pollutants that "in the Administrator's judgment, cause or

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[3] *Id.*

[4] *Id.*, at 52,929-33.

[5] *General Motors Corp. v. United States*, 496 U.S. 530, 532 (1990).

[6] *Train v. Natural Resources Defense Council*, 421 U.S. 60, 64-65 (1975).

contribute to air pollution which may reasonably be anticipated to endanger public health or welfare[.]"[7] Section 109 of the Act directs EPA to promulgate NAAQS to protect against adverse health and welfare effects for each pollutant identified under Section 108.[8]

States have "primary responsibility" for assuring that air quality within their borders meets the national standards.[9] States satisfy this burden by submitting to EPA state implementation plans ("SIPs") that provide for the attainment of the NAAQS.[10] SIPs must include enforceable emissions limitations for air pollution sources within a state and other control measures that are "necessary or appropriate" to meet the NAAQS, as well as a program for enforcing such measures.[11]

Taken together, Sections 109 and 110 are the cornerstone for much of the Act. As this Court has observed, EPA's setting of the NAAQS under Section 109(b) is "the engine that drives nearly all of Title I of the CAA[.]"[12] Similarly, the states' development of SIPs under Section 110 is "one of the key provisions of the Act."[13]

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[7] 42 U.S.C. § 7408(a)(1).

[8] 42 U.S.C. § 7409(a) and (b).

[9] 42 U.S.C. § 7407(a).

[10] 42 U S.C. § 7410(a).

[11] 42 U.S.C. § 7410(a)(2)(A).

[12] *Whitman v. American Trucking Ass'n, Inc.*, 531 U.S. 457, 468 (2001). Title I of the Act, 42 U.S.C. §§ 7401-7515, includes provisions regarding standards of performance for new stationary sources, regulation of hazardous air pollutants, preventing the significant deterioration of air quality in attainment areas, and improving air quality in nonattainment areas. 42 U.S.C. §§ 7411, 7412, 7470-92, 7501-15.

[13] *Virginia v. EPA*, 108 F.3d 1397, 1406 (D.C. Cir. 1997).

The states achieve the NAAQS "chiefly by regulating stationary sources, such as factories and power plants" through their SIPs.[14] In contrast to the states control over stationary sources, regulation of motor vehicle emissions is primarily a federal responsibility. Only the United States and California can establish emission standards for new motor vehicles and new motor vehicle engines.[15]

Although much air pollution is a local or regional problem, some pollution that results in the nonattainment of a NAAQS "is caused or augmented by emissions" from sources beyond a state's borders.[16] The CAA contains certain provisions to address emissions from 'upwind' states that pollute 'downwind' states.

For example, Section 110 requires a state's SIP to contain provisions to prohibit emissions within the state which "contribute significantly" to another state's nonattainment of a NAAQS.[17] Under Section 126, a downwind state can petition EPA to regulate upwind sources of air pollution that contribute significantly to a downwind state's nonattainment.[18] In addition, a state can sue an upwind source directly when the source is contributing to the downwind state's nonattainment of a NAAQS due to, among other things, the violation of an emission limitation.[19]

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[14] *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1078-79 (D.C. Cir. 1996).

[15] 42 U.S.C. §§ 7511(a), 7543(a) and (b); *see Engine Mfrs.*, 88 F.3d at 1079-80. The Act requires the states to implement, among other things, clean-fuel vehicles programs and motor vehicle inspection and maintenance programs in areas that have not attained the NAAQS. *See* 42 U.S.C. §§ 7511a(c)(3) and (4)(requiring such programs in "serious" nonattainment areas). The "thrust of state compliance efforts" is, however, reducing emissions from stationary sources. *Engine Mfrs.*, 88 F.3d at 1080.

[16] *Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1037 (D.C. Cir. 2001).

[17] 42 U.S.C. § 7410(a)(2)(D)(i)(I).

[18] 42 U.S.C. § 7426(b).

[19] 42 U.S.C. § 7604(a).

The Act, however, does not contain *any* provision for states to reduce air pollution from sources outside of the United States. Therefore, if international sources of air pollution are contributing to a state's inability to meet a NAAQS, the states have no authority under the Act to limit emissions from such sources.

2. Proceedings before EPA

On October 20, 1999, Petitioner International Center for Technology Assessment and 18 other organizations filed a petition for rulemaking (the "ICTA Petition") asking EPA to regulate certain greenhouse gas emission for new motor vehicles and engines under Section 202(a)(1) of the CAA, 42 U.S.C. § 7521(a)(1). In particular, the petition sought the regulation of CO_2, methane, nitrous oxide and hydroflourocarbon emissions from new motor vehicles and engines.

Section 202(a)(1) of the Act states that EPA shall prescribe standards for emissions of air poliutants from new motor vehicles and engines that "in his judgment cause, or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare."[20] Petitioners claim that CO_2 and other greenhouse gases are air pollutants that contribute significantly to global climate change.[21]

On September 8, 2003, EPA denied the ICTA Petition. EPA concluded that the CAA "does not authorize EPA to regulate for global climate change purposes[.]"[22] The agency therefore determined that CO_2 and other greenhouse gases cannot be considered "air pollutants" subject to the Act's regulatory

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[20] 42 U.S.C. § 7521(a)(1).

[21] 68 Fed. Reg. at 52,923.

[22] *Id.*, at 52,925.

provisions, including Sections 108 and 109, for any contribution they may make to global climate change.[23]

In reaching its conclusion, EPA analyzed the text and history of the CAA as well other congressional actions specifically addressing global climate change. EPA emphasized that "the NAAQS system – a key CAA regulatory mechanism – . . . . is fundamentally inadequate when it comes to a substance like CO_2, which is emitted globally and has relatively homogenous concentrations around the world."[24] EPA explained that "any CO_2 standard that might be established would in effect be a worldwide ambient air quality standard, not a national standard – the entire world would be either in compliance or out of compliance."[25] This situation "is inconsistent with a basic underlying premise of the CAA regime for implementation of a NAAQS – that actions taken by individual states and by EPA can generally bring all areas of the U.S. into attainment of a NAAQS."[26] The inadequacy of one of the Act's central regulatory provisions (the NAAQS system) to address global climate change reinforced EPA's conclusion that the CAA as a whole, including section 202, did not authorize the agency to regulate for global climate change purposes.

3. Proceedings before the U.S. Court of Appeals for the District of Columbia Circuit

The Court of Appeals dismissed the petitions for review. It did not, however, address the question of whether EPA has the authority under the Act to regulate greenhouse gas emissions to address global climate change. Instead, Judge Randolph, who authored the lead opinion and whose views were not shared by

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[23] *Id.*, at 52,925; 52,928.

[24] *Id.*, at 52,927.

[25] *Id.*

[26] *Id.*

any of the other panel members, assumed *arguendo* that EPA had such authority. *Massachusetts v. EPA*, 415 F.3d 50, 56 (D.C. Cir. 2005). He determined that the agency correctly exercised its discretion in concluding that regulation of greenhouse gas emissions from motor vehicles was not warranted. According to Judge Randolph, the agency's judgment was properly based on, among other things, the "scientific uncertainty about the causal effects of greenhouse gases on the future climate of the earth" and policy considerations that supported EPA's judgment not to regulate at this time. *Id.*, at 58.

Judge Sentelle concurred in the judgment dismissing the petitions for review. He concluded that Petitioners lacked standing because their "claimed injury is common to all members of the public" and is "the sort of general harm" that is insufficient to present a justiciable controversy under Article III of the Constitution. *Id.*, at 60. Judge Sentelle did not address the questions of whether EPA has the authority to regulate greenhouse gas emissions or whether EPA properly exercised its discretion in deciding not to regulate.

Judge Tatel dissented. He concluded that at least one Petitioner had standing, that EPA had the authority to regulate greenhouse gas emissions under Section 202 of the Act, and that EPA had not adequately explained its refusal to regulate at this time.

The panel denied a petition for hearing. On December 2, 2005, the panel denied a petition for rehearing *en banc*. (Pet. App. 94-97).

REASONS FOR DENYING THE PETITION

The judgment of the Court of Appeals is correct, and does not present an important federal question because it has no binding precedential effect.

A. The Court of Appeals correctly dismissed the petitions for review because the Act does not authorize EPA to regulate greenhouse gas emissions for purposes of global climate change.

EPA's determination that the CAA does not provide the agency with the authority to regulate greenhouse gases to address global climate change was based, in part, upon the text and structure of the Act as a whole. Among the Act's provisions that EPA analyzed was "a key CAA regulatory mechanism" – the NAAQS system.[27]

A large percentage of worldwide CO_2 emissions comes from outside of the United States.[28] Concentrations of CO_2 in the atmosphere are relatively homogenous throughout the world. A NAAQS for CO_2 therefore "could not be attained by any area of the U.S. until such a standard were attained by the entire world as a result of emissions controls implemented in countries around the world."[29]

Nothing in the Act, however, gives states the authority to control CO_2 emissions from sources outside of the United States. States can limit emissions from sources within their borders

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[27] 68 Fed. Reg. at 52,927. Although it is instructive to analyze the NAAQS system and Section 108, the State Respondents note that Petitioners seek regulation of greenhouse gas emissions only from new motor vehicles and engines under Section 202. Indeed, the factors to be considered in determining whether EPA has the authority to regulate greenhouse gases under Section 202 are not the same as those under Section 108.

[28] *Id.* at 52,925-29.

[29] *Id.*

through their SIPs. They can also petition EPA under section 126 to address air pollution sources in upwind states that contribute significantly to their nonattainment of a NAAQS, and they can use the citizen suit provision in the Act to sue such sources directly.[30] The Act, however, does not authorize states to limit air pollution from sources outside of the country.

Given the global nature of CO_2 emissions, its homogenous concentrations around the world, and the lack of authority for states to limit international sources of emissions, it would be impossible for states to attain a NAAQS for CO_2 by merely reducing emissions within their borders. As EPA noted, "the NAAQS system is fundamentally inadequate when it comes to a substance like CO_2, which is emitted globally and has relatively homogenous concentrations around the world."[31] An air quality standard for CO_2 would place states in the unworkable situation of having to attain that standard, but lacking the means to achieve it. Such an implausible and futile scenario establishes that Congress did not intend the NAAQS system to authorize regulation of CO_2 to address global climate change.[32]

Moreover, the failure of the NAAQS system– a regulatory provision central to the Act – to address global climate change demonstrates that the whole Act, including Section 202(a)(1), does not authorize regulation for global climate change purposes. Any suggestion that the Act authorizes regulation of greenhouse gases under Section 202(a)(1) but not under the NAAQS system ignores the principal that statutory interpretation requires an examination of not just a single sentence, but "the language and design of the statute as a whole."[33] It also ignores the fact that the

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[30] 42 U.S.C. §§ 7426(b), 7604(a).

[31] 68 Fed. Reg. at 52,927.

[32] *See Food and Drug Admin. v. Brown and Williamson Tobacco Corp.*, 529 U.S. 120, 141 (2000) (rejecting statutory interpretation that would result in an implausible regulatory scheme).

[33] *K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988).

NAAQS system is "the engine that drives nearly all of Title I of the CAA[,]" which contains the majority of the statute's provisions.[34] The impossibility of states achieving a NAAQS for CO_2 demonstrates that the entire Act, including Section 202, does not authorize regulation of greenhouse gases for purposes of global climate change. The Court of Appeals therefore correctly dismissed the petitions for review.

B. The judgment of the Court of Appeals does not have any binding precedential effect.

Among Petitioners' arguments for a writ of certiorari is that the D.C. Circuit departed from this Court's precedents on statutory interpretation. Petitioners further assert that the alleged error is compounded by the fact that the D.C. Circuit is the "premier intermediate court for adjudicating issues of agency power and statutory interpretation." Petition for Writ of Certiorari, at 4.

Petitioners, however, fail to acknowledge that the judgment of the Court of Appeals has no binding precedential effect as to principles of statutory interpretation. Judge Randolph's lead opinion was his alone. Judge Sentelle concurred in the judgment but never addressed the issue of statutory interpretation. Instead, he determined that the petitions for review should be dismissed because none of the Petitioners demonstrated they have standing. Judge Tatel, writing in dissent, disagreed with both Judges Randolph and Sentelle.

The judgment of the Court of Appeals therefore is not binding precedent because none of the opinions commanded a majority of the panel.[35] Any purported error in the lead opinion

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[34] *Whitman*, 531 U.S. at 468.

[35] *See Texas v. Brown*, 460 U.S. 730, 737 (1983)(plurality view that does not command majority is not binding precedent); *Hertz v. Woodman*, 218 U.S. 205, 213-14 (1910)("[T]he principles of law involved not having been agreed upon by a majority of the court sitting prevents the case from becoming an authority for the determination of other cases[.]").

concerning statutory interpretation is not an "authoritative determination" for subsequent cases before the D.C. Circuit or other courts.[36] Moreover, the D.C. Circuit correctly dismissed the petitions for review because, as discussed previously, the Act does not authorize the regulation of greenhouse gases for the purpose of addressing global climate change.

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[36] *United States v. Pink*, 315 U.S. 203, 216 (1942)("While it was conclusive and binding upon the parties as respect that controversy, the lack of an agreement by a majority of the Court on the principles of law involved prevents it from being an authoritative determination for other cases.")(citation omitted).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

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42 U.S.C. § 7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970] publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

42 U.S.C. § 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date of enactment; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall be regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970 [enacted Dec. 31, 1970], the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the

judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

42 U.S.C. § 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 [42 USCS § 7409] for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules

and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D [42 USCS §§ 8470 et seq., 7502 et seq.];

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C [42 USCS §§

7470 et seq.] to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 126 and 115 [42 USCS §§ 7426, 7415] (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128 [42 USCS § 7428], and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 303 [42 USCS § 7603] and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D [42 USCS §§ 7502 et seq.] (relating to nonattainment areas);

(J) meet the applicable requirements of section 121 [42 USCS § 7421] (relating to consultation), section 127 [42 USCS § 7427] (relating to public notification),

and part C [42 USCS §§ 7470 et seq.] (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V [42 USCS §§ 7661 et seq]; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3) (A) [Repealed]

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 118 [42 USCS § 7418] (relating to Federal facilities), enforcement orders under section 113(d), suspensions under section 110(f) or (g) [subsecs. (f) or (g) of this section] (relating to temporary energy or economic authority), orders under section 119 [42 USCS § 7419](relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 113(e) (relating to iron- and steel-producing operations) have been granted, if such plan would have met the

requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) [Repealed]

(5) (A) (i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under section 110(a) [42 USCS § 7410(a)] to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under section 110(c) [42 USCS § 7410(c)] respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and

other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii) [42 USCS § 7410(c)(2)(D)(ii)]), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 113(d) or section 119 (relating to primary nonferrous smelter orders) [42

USCS § 7419], the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

42 U.S.C. § 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d), relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.